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Recommended Citation

P. K. Menon, *The Law of Unlawful Possession*, 8 U. Miami Inter-Am. L. Rev. 743 (1976)
Available at: <http://repository.law.miami.edu/umialr/vol8/iss3/4>

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THE LAW OF UNLAWFUL POSSESSION

P. K. MENON*

INTRODUCTION

Unlawful possession is a criminal offence which is charged not infrequently in the English-speaking Caribbean countries. It is essentially a creation of statute, the precise origin of which is not clear.

Criminal law in the Caribbean is primarily the progeny of the English Common Law and statutes existent at the time of Great Britain's acquisition either by way of settlement, conquest, or cession of these territories. Be that as it may, the introduction into the colonies of a new breed of criminal offence, only remotely known in the mother country, is the outcome of the intellectual ingenuity of the colonial legislators.

The unlawful possession legislation, as will be shown, is contrary to the "golden thread" spirit of English law.¹ The legislation appears to have been designed to fit the needs of the prosecution and to alleviate the burdens of an undermanned law enforcement organization in situations where it is difficult to produce sufficient evidence to prove larceny or the reception of stolen goods. In spite of its utility, as a crime deterrent device, over-extensive use of this police power may debase the individual. The courts have recognized the ill effects on the alleged offender of a charge of unlawful possession and have been scrupulously cautious in their interpretation and application of the provisions of the law to the facts.

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THE GENESIS OF THE OFFENCE

The offence of unlawful possession of property is not unknown in English law; it draws certain selected characteristics from such precedes-

sors as the United Kingdom Metropolitan Police Courts Act of 1839 and the Larceny Act of 1861.² In combining these various elements, the offence in the Caribbean context has surpassed overwhelmingly the nature and scope of its predecessors and has acquired its own unique feature.

Section 24 of the Metropolitan Police Courts Act of 1839³ states:

. . . every Person who shall be brought before any of the said Magistrates charged with having in his Possession or conveying in any Manner anything which may be reasonably suspected of being stolen or unlawfully obtained, and who shall not give an Account to the Satisfaction of such Magistrate how he came by the same, shall be deemed guilty of a Misdemeanour, and shall be liable to a Penalty of not more than Five Pounds, or, in the Discretion of the Magistrate, may be imprisoned in any Gaol or House of Correction within the Metropolitan Police District, with or without hard Labour, for any Time not exceeding Two Calendar Months.

By Section 66 of the Act, a constable may detain and search any vessel, cart or carriage in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found, and also any person reasonably suspected of having or conveying such a thing.⁴ Further, in accordance with section 69, any one apprehended without a warrant is to be taken to the nearest station house until he can be brought before a magistrate.⁵

Succinctly stated, the Act provides that a man who is found in suspicious circumstances in possession of property which is stolen or unlawfully obtained may be asked by the law enforcement officer to give an account of how he got it. If the answer is not satisfactory, he shall be liable to a penalty.

Until recently, the act was construed in England rather restrictively. For example, in the case of *Hadley v. Perks*, Justice Lush, dealing with the effect of both Sections 24 and 66, held that a constable has the power to apprehend a person in a public street with property improperly come by or stolen.⁶ The rationale behind the power of apprehension is that if not stopped at once the suspect "might get out of the way, and evade detection altogether."⁷ Therefore the suspicion should occur in the public street or in the open, and nowhere else. But the decision in *Willey v. Peace*⁸ suggests that the power of apprehension by the police need not be confined to the public streets. Even if one has left the street, he may be searched and detained. Thus, according to Lord Goddard, C.J., "A person does not cease

to be conveying or having something in his possession if he has it when he walks along the street and then goes into a police station with the thing still in his possession, and is going to walk out of the police station if the police let him go.”⁹

STATUTORY PROVISIONS

Unlike England, the Caribbean states — both code and non-code jurisdictions — have detailed statutory provisions dealing with the offence of unlawful possession. These provisions, by and large, do not differ widely from one territory to another.

Code Countries

The Penal Code of the Bahamas contains a general provision with regard to the requirement that the individual account for possession of anything suspected of having been stolen.¹⁰

Grenada¹¹ and St. Lucia¹² have similar provisions in their criminal codes dealing with unlawful possession of anything in general and, in particular, possession of cattle or meat products thereof, plants or plant products, and instruments or equipment for obtaining, secreting, or removing liquors. St. Lucia, in addition, provides conviction for unlawful possession of property stolen, goods from distressed vessels, and property stolen elsewhere and brought into the country.¹³

Belize has a separate statutory instrument, “The Unlawful Possession of Property Ordinance,”¹⁴ which regulates the offence. The ordinance delineates the powers of the police to arrest suspects and to board vessels, as well as the procedures for the issuing of search warrants, tracing possession, and for trial and punishment.

Non-Code Countries

In Antigua,¹⁵ St. Christopher-Nevis-Anguilla,¹⁶ Montserrat,¹⁷ and the Virgin Islands,¹⁸ the general provision prohibiting the unlawful possession of property is enacted through the Small Charges Act.

In Barbados¹⁹ and St. Vincent,²⁰ it appears under the Magistrates Jurisdiction and Procedure Act and the Summary Jurisdiction Offences Act, respectively.

Dominica has a similar general provision,²¹ as well as particular provisions forbidding the unlawful possession of trees, stolen property,²² deer,²³ and goods from distressed vessels.²⁴ A significant departure from

the standard Caribbean law that may be noted in this context is that under Dominica's general provision; a suspect is not liable for conviction "if he proves that he had possession of such thing for more than three months".

The unlawful possession of property ordinance in the Turks and Caicos Islands²⁵ is similar to the Belizian law referred to earlier.

In Guyana, Section 94 of the Summary Jurisdiction (Offences) Act²⁶ regards possession of things which are reasonably suspected to have been stolen, including bicycles as an offence. Sections 95, 96, and 97 deal with possession of animals, instruments for obtaining liquor, and goods from distressed vessels.

In The Cayman Islands²⁷ and Jamaica,²⁸ the law is generally the same and may be found under the title "The Unlawful Possession of Property Law", Chapters 178 and 401, respectively. The law applies to suspects who are in unlawful possession of any goods, including articles of agricultural produce specified in the Schedule to the Act. Unlike the Caymans, Jamaican law distinguishes between agricultural produce and other goods. Concerning the former, a suspect comes within the purview of the provision if he "has had in his possession or under his control anything being an article of agriculture produce."²⁹ The powers conferred on the police personnel and those accorded "authorized persons" are not the same. The "authorized persons" referred to in the law exercise powers only with respect to unlawful possession of agricultural goods.³⁰

In Trinidad and Tobago,³¹ the Summary Offences Ordinance contains provisions dealing with unlawful possession of goods, and in particular, possession of trees, cattle, and articles from distressed, wrecked, or stranded vessels.

NATURE AND SCOPE OF THE OFFENCE

A typical statute creating the offence of unlawful possession may be worded as follows: Any person having in his possession, or conveying in any manner anything which may reasonably be suspected of having been stolen or unlawfully obtained, and who shall not give an account satisfactory to the Magistrate of how he came by the same, shall be liable to a fine.

Possession

The principal ingredient of the offence is possession of anything not lawfully obtained. The law is intended to punish such possession and

thereby to prevent future disturbances of rightful possession. "Having in possession" is different from merely being "in possession". Being in possession is not an act, but a legal status. This category of offence includes possession of dangerous drugs, explosives, counterfeit coins, currency notes, and government stamps and seals.

The word possession is not defined in the Act. In common usage, it means physical control of the goods by the person himself or by his agent. Control may be actual or potential. The case of actual physical control is easily understood. For example, the handbag which I carry is in my possession. However this does not necessarily mean that physical hold implies possession in every case.³² Equally comprehensible is the situation where a person can readily obtain actual physical control even though it does not exist presently. For instance, the clothes in the dressing table and the tape recorder in the sitting room are in my possession.

Goods found on the premises occupied by licensees are not under their possession. Similarly, a servant or agent does not have possession of goods on his master's premises. In *Garraway and Others v. Hebert*,³³ the five appellants occupied premises in which were found a quantity of motor vehicle parts, a car radio and some clothing. They had been given permission to stay there by the owner, Rampersad, who was at the time in the hospital. Rampersad had owned and kept on the premises a taxicab which was operated by one of the appellants. Another of the appellants, Welch, took charge of the premises, as directed by the owner during his absence. In delivering the judgement, Chief Justice Wooding said:

. . . the four remaining appellants (other than Welch) were mere licensee occupiers, if occupiers at all, of the respective portions of the premises in which they were found . . . In our judgement, joint possession cannot be inferred from these facts against these five appellants . . . it would in our view be plainly unjust to fix a servant or agent with the possession of goods in his master's premises merely because as such servant or agent he is left for the time being to take care of premises during his master's absence through illness in hospital or *merely* because he operated a service in which the suspected parts might be used and they were found under a bed in a room which he shared with a number of others.³⁴

Mere location of goods on the premises occupied by a person does not establish his control and may not amount to possession. In *Evans v. R.*,³⁵ Chief Justice A. M. Lewis of the Court of Appeal of West Indies Associated States said:

. . . the mere finding of stolen goods in a room occupied by a person is not sufficient of itself alone to prove possession. Something more must be proved in order to connect him with the control of those goods, either to show that they came into the room at his invitation or by his arrangement, or that having found them there, he assumed control over them.³⁶

In determining joint possession of goods by a man and woman occupying the same premises, an important factor is their marital status. Thus in *Braithwaite v. Harris*,³⁷ Chief Justice Worley commented, "When a wife is living in her husband's house there may be a presumption that the furniture and bedding in the house are his property, but this presumption does not arise if a man and woman are living together in concubinage. In such a case the man may have come to live with the woman or, if the woman has come to live with the man, she may have brought her own furniture and bedding . . ." This fine distinction has been blurred somewhat by the decision in *R. v. Maragh*³⁸ where the Court of Appeal in Jamaica held that despite the wife's proprietorship of the shop by holding the retailer's licence, "the appellant (husband) was at least jointly in control of this shop."³⁹

Most of the territories have employed the basic principle of "having in possession;" Dominica and St. Lucia, however, have extended this concept to "having had in possession" and "has had in possession" respectively. Jamaica has also extended this rule with respect to an article of agricultural produce. The broader principle followed in these territories is important and has been subjected to judicial interpretation by the Jamaican Court of Appeal in *Murphy v. Richards*.⁴⁰ In that case, the plaintiff claimed damages for assault and false imprisonment against a police constable who had arrested him for the unlawful possession of a cow even though the animal was not in his possession at the time of the arrest. In delivering judgement of the Court, Justice Cools-Lartigue, held as follows:

The first point raised for our consideration by learned counsel for the appellant was that the appellant, at the time of his arrest, was not in fact in possession of any cow; that he was consequently not a "suspected person" as defined under the Unlawful Possession of Property Law, Cap. 401[J], and that therefore his arrest was unlawful . . . It appears to us obvious in view of that definition that the appellant was not a "suspected person" at the time of his arrest.⁴¹

Having in Possession or Conveying in Any Manner

The phrase "having in possession or conveying in any manner" has been interpreted by the courts in both England⁴² and in the Caribbean⁴³ and there is divergence of opinion as to its meaning.

In the English parent case *Hadley v. Perks*,⁴⁴ the words were interpreted restrictively. It was not enough that the goods were merely possessed; they must be possessed for the purpose of being conveyed.⁴⁵ Furthermore, the Court was of the opinion that the Act "applies only to offences, or to the suspicion of offences, out of doors — to street offences, cases in which circumstances occur in the street, which give reason to suspect that property has been stolen or unlawfully obtained."⁴⁶ The decision, therefore, determined that the legislation applied only where goods were suspected to be in transit.⁴⁷ In other words, the law did not provide authority for a constable to arrest without warrant any person having in his possession, in any house, store, or other private habitat anything which might reasonably be suspected to have been stolen or unlawfully obtained.

This restrictive interpretation of the statute by the English courts has prompted, it appears, many of the Caribbean territories to amend their laws.⁴⁸ The amendment took various forms. In general, "having in his possession or conveying in any manner" has been replaced by "having in his possession or under his control in any manner or in any place."⁴⁹ Since then, several court decisions have given the words their natural meaning and have refused to cut down on the generality of the language.⁵⁰

In 1964, after making searching analysis of the historical development of the offence, Sir Hugh Wooding concluded that the phrase "must be given a restricted meaning, that is to say, that they must be construed as meaning in any public place."⁵¹ His decision was based on the following considerations: (1) the requirement of a warrant to enter and search private premises; (2) the express authority to enter or board any vessel upon a public waterway; and (3) the inviolability at common law of the privacy of private premises upon which the public have no right.⁵² Nevertheless, the Privy Council did not approve the restrictive meaning and did not find any reason for introducing the additional limiting word public. From their Lordship's point of view,

[t]he language of S.36(1) is clear and their Lordships see no reason for introducing additional words in to it. The words in the section are "in any place". If the words in S. 36(1) are being considered

by themselves their meaning would not seem to admit of doubt. Nor have their Lordships found any reason as the result of an examination of the following subsections and sections of the Ordinance to give to the words any meanings other than their natural ones.⁵³

Anything

From the context, the word anything should mean things capable of being stolen or unlawfully obtained. The offence can be committed by having in one's possession any chattel,⁵⁴ money or valuable security under circumstances as provided in the Ordinance; it cannot possibly be committed by possession of immovable things, abandoned goods, or articles of no value.⁵⁵

As Glanville Williams points out,⁵⁶ the scope of "unlawfully obtained" is rather vague. He continues, "There is no judgement of a superior court on the point, but during the Second World War metropolitan magistrates refused to hold that rationing offences came within the purview of the legislation, which they thought was confined to offences of theft and fraud."⁵⁷

Reasonable Suspicion

Before the accused is called upon to give a satisfactory account, the magistrate should be satisfied not only that the goods were found in the suspect's possession, but also that the constable had reasonable cause to suspect the goods to have been stolen or unlawfully obtained.

The term reasonable cause is difficult to define. Perhaps it is sufficient that the facts and surrounding circumstances are such as to allow a person of prudence and caution to suspect that the goods in question are stolen or unlawfully obtained.

Good faith alone may not be enough to constitute reasonable cause. That faith must be grounded on facts within knowledge of the arresting constable, which in the considered judgement of the magistrate would make this faith reasonable.⁵⁸

There are many surrounding circumstances which affect a determination of a criteria, for reasonable cause. Some of them are nature of the thing possessed, details of description, character of the person, time of day, concealed conduct, admission of the person being questioned, criminal record of the person and his associates, reputation of the location, and any recent crime wave in the neighbourhood.

As mentioned earlier, in hearing a charge of unlawful possession the magistrate is required to examine two key questions. The first is whether the constable suspected that the goods found were stolen or unlawfully obtained; the second is whether the constable had reasonable cause for suspicion.

With regard to the first question, the element of subjectivity is the predominant consideration because "the mental state of suspicion must be borne of the preception by the constable of particular circumstances or factors which operate to produce that mental state."⁵⁹ The constable must have information that the things actually have been stolen or unlawfully obtained and not that they are suspected to be stolen or unlawfully obtained. Thus Wooding C.J. held in *Garraway and Others v. Herbert*⁶⁰

. . . the section authorises the issue of a search warrant only if a police constable is able *bona fide* to swear, and in fact does, that goods which have been *actually* stolen or unlawfully obtained, and which therefore should be specified in such a way that they can be plainly identified are suspected on reasonable grounds to be concealed or locked in the premises sought to be searched. It does not extend to authorising the issue of a warrant to search for goods which are merely suspected to have been stolen or unlawfully obtained . . .⁶¹

With regard to the second question, reasonable cause is "a positive fact capable of determination by a third party as is a broken ankle or a legal right."⁶² A police officer having reason to suspect does not mean and cannot mean an officer thinking he has reason to suspect.⁶³ The test is objective and the standard is of a reasonable man. Elaborating this point, Chief Justice Wooding explained in *Boodoo v. Joseph*:⁶⁴

Not only must cause exist; it must also be reasonable. And whether it is reasonable will depend upon all the known circumstances of each case. In some cases, the possession or lack of relevant information may be significant; in others, it may be of no consequence whatever. No single factor can be posited as essential. The facts must be examined dispassionately and assessed objectively according to the standards of the reasonable man.⁶⁵

Reasonable suspicion has to be aroused in the constable himself and not injected into him through some one else. In *R. v. Burgess*,⁶⁶ the accused Burgess was seen to take some powder from a shop and put it in a bag. When accosted, he dropped the bag and ran away. He was caught by a citizen shortly thereafter, and a constable was called. When the con-

stable opened the bag, he saw the powder, together with three clocks and forty-two knives, which became the subject of the unlawful possession charge. The Jamaican Court of Appeal held that the accused was wrongly convicted ". . . as he, not having been found in possession of the articles by the arresting constable, was not a suspected person as defined by the Unlawful Possession of Property Law, Chap. 401."⁶⁷

The arresting constable has to produce specific or inferential evidence to show that, prior to the arrest, he had reasonable cause to suspect the goods were either stolen or unlawfully obtained. In *R. v. Walters*,⁶⁸ the police, armed with a search warrant, searched the appellant's home (a room and a hall) and found under his bed a bag containing 153 pounds of sugar. The appellant said that he had found it on a ship and put it there. He was arrested for unlawful possession of the sugar. The court, dismissing the appeal, said:

In this case we are satisfied that the circumstances surrounding the finding of the sugar indicate the ground for suspicion, namely, the large quantity of sugar found, the place where it was found — under the bed, the status in life of the appellant which was apparent to the constable, and the statement of the appellant before arrest. These facts were together sufficient to raise in the mind of the constable a reasonable suspicion that the sugar was stolen or unlawfully obtained and to justify his arrest.⁶⁹

However, in *Obadiah Parkinson v. R.*,⁷⁰ the Supreme Court of Jamaica held that there was no evidence of reasonable suspicion when the Detective Corporal, acting under a warrant to search the appellant's premises for articles of hardware, failed to find these, but found a huge collection of brassieres and a roll of blue lace in the bedroom.

Should reasonable cause of suspicion be related to the thing possessed or to the person possessing the thing? At first sight, the wording of the section might suggest that it refers to the thing. A more careful examination of the section may reveal that the suspicion does not relate solely to the thing possessed quite independent of the conduct of the possessor.

In *Langdevine v. Dysal Singh*,⁷¹ the Guyanese Court of Appeal held that the only requirement is evidence of possession and that the thing possessed is reasonably suspected to be stolen or unlawfully obtained property. According to Chief Justice Verity, "In other words, it is in

relation to the thing itself that there must attach reasonable suspicion and not to the conduct of the person found in possession thereof.”⁷²

On the other hand, in *Boodoo v. Joseph*,⁷³ Philips, J. A. of the Court of Appeal, Trinidad and Tobago, stated that a person's conduct may be a more reliable basis on which to found a suspicion than information given about him by someone else.⁷⁴ He continued to say, “Such information which *ex hypothesi* would be of self-incriminating character, is in reality merely one species of conduct indicative of guilt; and there accordingly appears to be no valid reason for the exclusion of other such indications from consideration.”⁷⁵ In a later case, *Ramcharan v. Arietas*,⁷⁶ Chief Justice Wooding placed heavy reliance on the conduct of the person and said that “evidence as to the behaviour of the appellant is, if believed, such as makes it impossible to avoid the conclusion that the appellant was seeking to hide from the corporal the existence in his premises of the pan with the jewellery and raw gold which was brought into court.”⁷⁷ In a more recent case, *Freeman v. Scott*,⁷⁸ it was the suspicious behaviour of the accused in transferring articles to his car at the Port-of-Spain General Hospital that prompted Constable Scott to arrest him and which resulted in a conviction.

The better view appears to be that of Graham-Perkins, J.A. in *R. v. Melvin Spragg*:⁷⁹ “the right and duty to arrest flowed from the existence, in the constable effecting the search, not only of reasonable cause to suspect anything found to have been stolen or unlawfully obtained but also of reasonable cause to suspect anything found to have been stolen or unlawfully obtained but also of reasonable cause to suspect that the person in whose house or premises, a thing is found or any other person found in such house or premises.”

The Account

If the magistrate is satisfied that there was possession, as well as reasonable suspicion that the goods were stolen or unlawfully obtained, it is left to the defendant to give a satisfactory account of his possession to the court. In default, he will suffer the penalty prescribed by the law.

The word satisfactory is not defined in the Act. The magistrate may not be interested and hence may not be satisfied merely to listen to an honest account explaining the fact of possession. The interpretation given by the judges indicates that “he will be satisfied but only by hearing an account which is at the same time true and satisfactory to the criminal law.”⁸⁰

In an early decision, the Supreme Court of Jamaica said that "it is not sufficient that he [the defendant] should produce on the mind of the Court a reasonable doubt as to his guilt."⁸¹ Later decisions, on the other hand, demonstrate that if the explanation of the defendant is reasonably true, having regard to all the circumstances, the magistrate must direct himself that if he is satisfied that the possession was innocent or is left in doubt as to this question, the case should be acquitted.⁸²

On the basis of recent decisions, it may be concluded, that any reasonable and true explanation, not necessarily the only one that convinces the magistrate, is accepted as a satisfactory explanation. In *R. v. Doreen Hill*,⁸³ a detective constable received certain information concerning a robbery, housebreaking, and larceny committed in the Montego Bay area. On the same day, he went to Montego Bay, and there he saw the appellant. As the constable approached the appellant, she suddenly put her hand behind her back. The constable noticed that she was wearing a gold ring, a gold Perseguax ladies' watch, and a gold chain and pendant, as well as other jewelry. When asked how she came into possession of the articles, she said that she had bought them from someone from Kingston. The constable then informed her that he did not believe her story, and she was driven to the police station.

On the way, the appellant jumped out of the car. The constable recaptured her and took her to the Montego Bay police station where she was informed that he believed that the articles had been obtained unlawfully. She was then arrested and charged with unlawful possession.

In the account the appellant gave to the Resident Magistrate, she described herself as unemployed but a "sport" when she worked. The chain had been given to her by a boy. The ring and the watch she had bought from a travelling salesman in Montego Bay.

The Court of Appeal considered all the evidence and came to the conclusion that the Magistrate erred in not being satisfied with the explanation given him by the appellant. The court cited *King v. Brown*⁸⁴ as precedent for its decision. In that case Justice Brown said:

I venture, however, to think that though the burden of proof is on the prisoner, the evidence must be viewed reasonably, and, if it appears that the account given by the prisoner is one which appears to be reasonably true, he should not be convicted.⁸⁵

The Court of Appeal concluded that the appellant gave a reasonable explanation concerning her possession of the articles and that the magistrate should have so held. Therefore, the appeal was allowed, the conviction quashed, and the sentence set aside.

The magistrate is expected to make a judicial enquiry to determine whether there is reasonable ground for suspecting the accused. This suggests that the accused should be given an opportunity to probe the evidence in chief by cross examination with a view of establishing his innocence. Denial of that opportunity "is contrary to natural justice and an improper exercise of the Resident Magistrate's function."⁸⁶

Tracing Possession

In a few cases the accused may merely be the innocent agent, carrier, or servant of another. In those cases, he is given an opportunity to show that the property in his custody is actually in the constructive possession of the employer. Most of the territories have detailed provisions to handle such situations. An example of such provisions is that of Trinidad and Tobago which states:

"(1) If any person brought or appearing before a Magistrate . . . declares that he received any such thing as therein mentioned from some other person, or that he was employed as a carrier, agent, or servant to convey the same for some other person, the Magistrate may cause every such other person, and also any other person through whose possession any such thing shall previously have passed, to be brought before him.

(2) Upon any such person as is in the last preceding subsection mentioned being brought before him, it shall be lawful for the Magistrate to examine him as to whether he has been in possession of any such thing as aforesaid, and upon his admitting such possession, or upon its being proved to the satisfaction of the Magistrate that such person has been in possession of any such thing, the Magistrate may call upon such person to give an account to the satisfaction of the Magistrate by what lawful means such person came by such thing, and if such person fails, within a reasonable time to be assigned by such Magistrate, to give such account, he shall be liable to a fine. . . .

(3) For the purposes of this section, the possession of a carrier, agent, or servant shall be deemed to be the possession of the person who shall have employed such carrier, agent, or servant to convey the same."⁸²

SOME CONCLUDING OBSERVATIONS

The law of unlawful possession is a sweeping rule which is contrary to the basic principle of time-honoured English jurisprudential theory that the onus of proof of a criminal offence is on the prosecution. It is also against the English common laws which do not permit police officers to search a person simply because he may have committed some crime.

Guilt in a criminal case must be proved beyond reasonable doubt and by the rules of evidence. These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also seek to give the police fair leeway to enforce the law for the community's safety and protection.

It is universally agreed, under the common law and otherwise, that a police officer may arrest a felony suspect without a warrant. He may also make an arrest without a warrant for a misdemeanour committed in his presence, if the misdemeanour amounts to a breach of the peace, that is, if it contains an element of actual or threatened violence. Public safety and the due apprehension of criminals charged with heinous crimes require that such arrests be made at once without a warrant because of the danger that the offender may escape or dispose of evidence before the officer can obtain a warrant.

The unlawful possession statutes permit the constable to search and arrest the citizen merely because the constable has reasonable cause to suspect that the goods in his possession are stolen or unlawfully obtained. Uncontrolled search may deprive the individual of his fundamental rights to liberty, security, and privacy, to the detriment of the spirit of the individual.

The courts and legal writers have endeavoured to define and explain the term reasonable, but unfortunately there is no scientific definition to fit all situations. In some cases, the question of what is reasonable may be obscure, and this obscurity may create a conflict of interests: a conflict between the powers of the constable and the rights of the citizen. If the police act unreasonably, what rights do the citizens — especially the weak and the poor — have?

The prevention of crime is of a grave concern to society, and the percentage of theft cases is rising to unprecedented levels. It is also true that if the constable does not take immediate action at the sight of goods which he believes to be stolen, the suspect as well as the goods may disappear

swiftly. Supporters of the statute may well say that the provision is a powerful weapon for the effective prevention of crime and enforcement of the law.

Admittedly, the safety of the country requires effective measures of crime detection and a deterrence punishment. At the same time, the society is also concerned with the rights of its citizens to live in reasonable security and freedom from surveillance. When the right of privacy must yield to the right of search, it is to be decided by a judicial officer and not by a policeman. The efforts of the police to capture the accused should not be sacrificed to the well-established principles of judicial determination.

Striking the unlawful possession law provisions from the statute might result in some impairment of the efficiency of law enforcement agencies. But this price is worth paying in a democratic society since it safeguards the freedom of the whole population. The oft-quoted saying is that "it is far, far better that the guilty escape justice than that injustice be visited upon the innocent."⁸³

NOTES

¹The "golden thread" spirit of English law is that the burden of proof is on the prosecution, and the prosecution must prove its charge beyond reasonable doubt. Emphasizing the importance of this principle, Lord Viscount Sankey, L. C., in *Woolmington v. D.P.P.* [1935] A.C. 462, said, "Throughout the web of English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt. . . . No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."

²See *Larceny Act, 1861*, 24 & 25 Vict., C. 96, §§35, 65 and 66.

³Metropolitan Police Courts Act of 1839, 2 & 3 Vict., C. 71, §24. It may be noted that the act only applied to the metropolitan area. Similar provisions of law exist in some other larger cities of England and in particular in Liverpool. See also Lord Goddard in *Flatman v. Light and Others* [1946] 2 ALL E. R. 369 (K.B.).

⁴Metropolitan Police Courts Act of 1839, 2 & 3 Vict., C. 47, §66. See also *Williams, Arrest on the Ground of Unlawful Possession* [1960] CRIM. L. REV. 598.

⁵*Id.* §69.

⁶[1866] 1 L.R. Q.B. 444, 462. (emphasis added)

⁷*Id.*

⁸[1950] 2 All E.R. 724 (K.B.).

⁹*Id.* at 726.

¹⁰See *Bahamas, Penal Code* Ch. 48 §150(2) in 2 *The Statute Law of the Bahamas Islands* (London: Waterlow & Sons, Ltd. 1965) at 949.

¹¹See Grenada, *Criminal Code*, Ch. 76, §100-103 in 1 *The Revised Laws of Grenada* (St. Lucia: The Voice Publishing Company, Ltd. 1962) at 740-42.

¹²See St. Lucia, *Criminal Code*, Ch. 250, bk. II, Part II, §366-368, 374 in 5 *Saint Lucia Revised Ordinances, 1957* (St. Lucia: The Voice Publishing Company Ltd. 1959) at 557-58, 560-61.

¹³*Id.*, §§ 367, 371, 373.

¹⁴See Belize, *Criminal Code*, ch. 25 in 1 *The Laws of British Honduras* (London: Waterlow & Sons, Ltd. 1960) at 694.

¹⁵See Antigua, *Small Charges*, ch. 77, § 44(3) in 2 *The Revised Laws of Antigua* (London: Waterlow & Sons Ltd., 1965) at 654.

¹⁶See St. Christopher-Nevis-Anguilla, *Small Charges*, ch. 75, §44(3) in 2 *The Revised Laws of St. Christopher Nevis and Anguilla* (London: Waterlow & Sons Ltd., 1964) at 670.

¹⁷See Montserrat, *Small Charges*, ch. 74, §44(3) in 2 *The Revised Laws of Montserrat* (London: Waterlow & Sons Ltd., 1965) at 660.

¹⁸See British Virgin Islands, *Small Charges*, ch. 72, §44(3) in 2 *The Revised Laws of the Virgin Islands* (London: Waterlow & Sons Ltd., 1965) at 652.

¹⁹See Barbados, *Magistrates Jurisdiction and Procedure Act*, §44(3) in 3 *The Laws of Barbados* (Bridgetown: Government Printer, 1974).

²⁰See St. Vincent, *Summary Jurisdiction Offences*, ch. 13, §77 in 1 *The Laws of St. Vincent* (Kingstown: Government Printer, 1970) at 731.

²¹See Dominica, *Small Charges*, ch. 53, §44(2) in 1 *The Laws of Dominica* (London: Eyre and Spottiswoode, Ltd., 1963) at 630.

²²*Id.* at *Larceny*, ch. 41, §31., at 486.

²³*Id.* at §12, at 478.

²⁴*Id.* at §58-61, at 493-94.

²⁵See Turks and Caicos Islands, *Unlawful Possession of Goods*, ch. 24 in 1 *The Laws of the Turks and Caicos Islands* (Turks and Caicos Islands, 1970) at 355-358.

²⁶See Guyana, *Summary Jurisdiction (Offences) Act*, ch. 8:02 §94 in *The Laws of Guyana* (Government of Guyana, 1973) at 37-38.

²⁷See Cayman Islands, *The Unlawful Possession of Property Law*, Chapter 178, in 3 *The Laws of the Cayman Islands* (London: Eyre and Spottiswoode Ltd., 1963) at 2135-2140.

²⁸See Jamaica, *The Unlawful Possession of Property Law*, ch. 401 in 9 *The Laws of Jamaica* (Kingston: Government Printer, 1973) at 6379-87.

²⁹*Id.* §2(a).

³⁰*Id.* §7; Cayman Islands *supra* note 27., §7.

³¹Trinidad and Tobago, *Summary Offences*, ch. 2, No. 17, §§27, 28, 34, 36-38, in 1 *Trinidad and Tobago Revised Ordinances, 1950* (London: C. F. Roworth, Ltd., 1951) at 520, 522-524.

³²See *Ghany v. R.* in which Fraser, J.A. said: "A man may possess property without taking manual hold of it himself; on the other hand, manual hold of it does

not necessarily imply possession. What is required to be established . . . is that the prisoner had control over the property either alone or jointly with another or others." 12 W.I.R. 372, 373 (1967).

³³13 W.I.R. 174 (1968).

³⁴*Id.* at 177-178.

³⁵10 W.I.R. 557 (1967).

³⁶*Id.* at 559.

³⁷[1951] L.R.B.G. 24.

³⁸6 W.I.R. 235 (1964).

³⁹*Id.* at 237.

⁴⁰2 W.I.R. 143 (1960).

⁴¹*Id.* at 145.

⁴²See *Having in His Possession or Conveying*, 126 JUST. P. 170 (1962).

⁴³See generally Alfred Crane, *The Law of Unlawful Possession, Larceny and Receiving* (Guyana: The B. G. Lithographic Company Ltd., 1966); See also Wooding C. J. in *Felix v. Burkett and Thomas* 7 W.I.R. 339 (1964).

⁴⁴[1866] 1 L.R.Q.B. 444.

⁴⁵*Id.*, In the words of Blackburn, J., "Having or conveying must be limited, making the one co-extensive with the other and confining it 'having' *eiusdem generis* with 'conveying'." *Id.* at 457.

⁴⁶*Id.* at 460 (Shee, J., concurring).

⁴⁷See Williams, *supra* note 4, at 602.

⁴⁸For example Belize, Cayman Islands, Dominica, Guyana, Jamaica, Trinidad and Tobago, Turks and Caicos Islands, St. Vincent.

⁴⁹The development of this branch of law was probably started originally in Guyana. See Alfred Crane, *supra* note 43, at 8; see also Wooding, C.J. *supra* note 43.

⁵⁰E.g.: *Roberts v. Barban*, 6 Trin. L.R. 113 (1930) where Walton, A.g. C.J. of the Full Court said that the "section [Sec. 36(1) of the Summary Offences, Chapter 4 No. 17, Trinidad and Tobago] is so clear that one wonders at the objection taken—words could not be wider". *Accord Lawrence v. Ojoe*, 3 Trin. L.R. 28 (1917) a question of construction of the then §14(1) of the 1916 Ordinance (No. 43 of 1916) came before the Supreme Court. Although Chief Justice Lucie-Smith stated in a dissenting judgment that Section 14 only applied to persons having goods in their possession *in transitu*, the majority took the view that it was clear that the appellant had the goods in his possession and that the plain words of Section 14 applied. Justice Blackwood-Wright said, "Section 14(1) of our Ordinance is complete in itself. It gives power to arrest. There is nothing to narrow its plain words."

⁵¹Wooding, C.J., *supra* note 43, at 353.

⁵²*Id.*

⁵³*Felix v. Thomas* 10 W.I.R. 507, 514 (1966).

⁵⁴Chief Justice Wooding had stated that the word chattel is of very wide import and "includes within its ambit any goods which were the subject of larceny at common law . . . Hence 'chattels' will include all domestic animals, and, therefore, will include poultry." *Brathwaite v. Daniel and Harper* 7 W.I.A. 366 (1964).

⁵⁵At common law, only things that have value are capable of being stolen. In most of the Caribbean territories, the law relating to larceny is essentially the common law of England. The Larceny Act, 1916 (United Kingdom) which has been adopted in the territories, "made no change in the law but merely consolidated it without imposing anything new." Stoby, C.J., in *Bourne v. Edwards* 1 W.I.R. 96 (1959).

⁵⁶Williams, *supra* note 4, at 602.

⁵⁷*Id.* Commenting on the comparable legislation, the author states that it "seems clear that the section does not create an offence of possessing or conveying stolen goods, if the accused did not know when he received them that they were stolen. If a person receives goods innocently, his subsequent knowledge that they have been stolen does not make him guilty of a crime, though he may be liable for the tort of conversion".

⁵⁸*See* Director General of Railroads v. Kastenbaum, 263 U.S. 25 (1923).

⁵⁹Graham-Perkins, J.A., in *R. v. Melvin Spragg* (1975; Court of Appeal, Jamaica).

⁶⁰13 W.I.R. 174 (1968).

⁶¹*Id.* at 175. *See also* Felix v. Burkett and Thomas 7 W.I.R. 339 (1964); *R. v. Stephens* 6 W.I.R. 311 (1964); *R. v. Parkinson* 2 W.I.R. 454 (1960); *R. v. Walters* 5 J.L.R. 110 (1948); *Lawrence v. Ojoe* 3 Trin. L.R. 28 (1917).

⁶²Lord Atkin in *Liveridge v. Anderson* [1942] A.C. 206, 227-28.

⁶³Wooding C.J. in *Cedeno v. O'Brien* 7 W.I.R. 192, 198 (1964).

⁶⁴7 W.I.R. 373, 379 (1964).

⁶⁵*Id.* at 379.

⁶⁶5 W.I.R. 59 (1962).

⁶⁷*Id.* at 60. Delivering the judgement of the Court, Duffus, J.A. further said: "The facts in the instant case show that the arresting constable, Trevor Lawrence, did not find the appellant in possession of the things for which he was charged. It was the witness, Ionie Johnson, who said that she had seen him in possession of the bag in which the things were later found; that she held on to the bag and the appellant let it go in her hand. Ionie Johnson was not a constable or an 'authorised person' duly appointed under the provisions of the law, therefore her suspicions, if any, would not make the appellant a 'suspected person'." *Id.* at 61.

⁶⁸5 J.L.R. 110, 111 (1948).

⁶⁹*Id.* at 111.

⁷⁰2 W.I.R. 454 (1960). Delivering the judgement of the court, Justice Duffus said: "Nowhere does it appear that the constable had any information that similar goods had been stolen from anyone or that there was the loss of any such goods from any wharf or, for that matter, from any place or person whatever. What then made the constable suspect that the goods had been stolen or unlawfully obtained? . . . There was nothing, in our view, which could have given rise to a reasonable suspicion in this case." *Id.* at 457. *See also* *R. v. Stephens* 6 W.I.R. 311 (1964); *Ramcharan v. Arietas* 13 W.I.R. 170 (1968); *R. v. June Williams* 16 W.I.R. 269 (1970), and *R. v. Vincent Whyte* 18 W.I.R. 291 (1972).

⁷¹[1945] L.R.B.G. 88, followed by the Full Court in *Rudradeo v. Dwarkanand* [1959] L.R.B.G. 154. *See* Alfred Crane, *supra*, note 43 at 74.

⁷²*Id.* at 74-75. The learned judge asserted that this distinction cannot be overlooked and may be decisive in certain cases. The questions to be answered he thought

to be simply these: "Was the accused found in possession of the thing? Were there reasonable grounds for suspecting that the thing had been stolen or unlawfully obtained? It is not necessary for the prosecution to establish that the accused himself stole or unlawfully obtained the thing or even that he may be reasonably suspected of having done so. [See *Toussaint v. Leung* [1921] L.R.B.G. 173, 174]. If these two questions can be answered in the affirmative, then the onus is on the accused to explain how he came by the articles and he certainly cannot do so by denying his possession."

⁷³⁷ W.I.R. 373 (1964).

⁷⁴*Id.* at 381-82.

⁷⁵*Id.* at 382.

⁷⁶13 W.I.R. 170 (1968).

⁷⁷*Id.* at 172.

⁷⁸Court of Appeal, Trinidad and Tobago (July 14, 1975). Delivering the judgment, M. A. Corbin, J.A. said: "It [§36 of ch. 4 No. 17] does not say that a person is guilty of an offence if a constable has reasonable cause to suspect him. It provides special machinery by which a person found in possession of property suspected to have been stolen may be brought before a Magistrate who then conducts a judicial enquiry to determine whether there is reasonable ground for suspecting that that person was in unlawful possession of the article so found and, if so, whether he has given a satisfactory account by what lawful means he came into possession thereof."

⁷⁹(1975, Court of Appeal, Jamaica)

⁸⁰*Williams, supra* note 4, at 601. "[T]he suspect must show that he is not a party to the offence of stealing or unlawfully obtaining, or of receiving goods knowing that they have been stolen or unlawfully obtained". *Id.*

⁸¹*Rex. v. Lester Beckford* [1934] 2 J.L.R. 21.

⁸²*Worley, C.J., in Braithwaite v Harris* [1951] L.R.B.G. at 29.

⁸³(1974) Court of Appeal, Jamaica (Resident Magistrate's Criminal Appeal No. 86/73).

⁸⁴[1929] Clark's Supreme Court Judgements, 301.

⁸⁵*Id.* at 304.

⁸⁶*R. v. Williams* 6 W.I.R. 320, 322 (1964).

⁸⁷Summary Offences Ordinance §39, ch. 4, No. 17 (Trinidad and Tobago)

⁸⁸J. Hogan and J. Snee, *The McNabb-Mallory Rule: Its Rise, Rationale and Rescue*, 47 GEO. L. J. 25 (1958).